

# **CHAPTER 29**

## **SOLDIER SUPPORT TO FAMILY MEMBERS**

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# **CHAPTER 29**

## **SOLDIER SUPPORT TO FAMILY MEMBERS**

### *Outline of Instruction*

#### **I. INTRODUCTION:**

“I was married by a judge. I should have asked for a jury.”

— Groucho Marx

#### **II. REFERENCES.**

Army Regulation 608-99, Family Support, Child Custody, and Paternity (29 Nov. 2003).

#### **III. MILITARY POLICY REGARDING FAMILY SUPPORT.**

- A. DOD Policy: Service members will not use military service to evade family support obligations.
- B. Support Enforcement in the Army: Army Regulation 608-99.
  - 1. Purposes of AR 608-99.
    - a. Implement DOD policy on family support.
    - b. Define the amount of a soldier's family support obligation.
    - c. Create a mechanism to ensure soldiers meet their support obligations.

- d. Define Army policy regarding paternity allegations.
  - e. Define Army policy regarding child custody matters.
2. Command interest. The purpose of interim support is to provide some family support while the parties seek an agreement or settlement by a court.
3. Punitive Provisions of AR 608-99's Support Requirement. AR 608-99, para. 2-5.
- a. Soldiers cannot fall into arrears on their support obligations without violating AR 608-99. However, there is no legal means to collect arrearages in the military based on a soldier's failure to comply with the regulations "Interim Support" requirements. AR 608-99, para. 2-5c.
  - b. Soldiers who fall into arrears may be punished under Article 92, UCMJ, for failing to make support payments when due. AR 608-99, para. 2-5c.
  - c. The financial support requirements of AR 608-99 may also be the subject of lawful orders issued by commissioned or noncommissioned officers. Failure to obey such orders may be charged as violations of the UCMJ. AR 608-99, para. 3-10d.
4. Whom must the soldier support?
- a. Soldiers must support "family members." See glossary of AR 608-99.
    - (1) Current spouse.
    - (2) Minor children (unmarried, under 18 and not in the Armed Forces) born into the soldier's marriage or adopted by the soldier.

- (3) Children born out of wedlock to:
  - (a) A female who is a soldier; or
  - (b) A male soldier **if** a court order establishing paternity (or the functional equivalent) exists.
- (4) Any other person the soldier may be required by law to support. *E.g.*:
  - (a) Stepchildren. Not included as family members unless required by state law.
  - (b) Parents. Not included as family members unless required by state law.
- b. **Note:** Family member under AR 608-99 may differ from the definition of dependent for other entitlements such as health care, BAH, and commissary/PX benefits.

5. How Much Support?

- a. A soldier must comply with any applicable court order. AR 608-99, para 2-4. Failure to comply with a court order may be the basis for a lawful order from a commander to comply. AR 608-99, para. 2-4b.
- b. Absent court ordered support, a soldier must comply with any written agreement regarding support (*e.g.* a separation agreement). AR 608-99, para. 2-3.
  - (1) When verbal agreements exist and are being followed, the Army will not interfere. AR 608-99, para. 2-3a.

- (2) However, when a dispute arises over the terms of the agreement, no “agreement” exists, and a soldier must comply with the terms of the regulation’s “Interim Support” measures (below).
- c. Absent a court order, written agreement, or effective oral agreement, a soldier must pay the Interim Support required under AR 608-99, para. 2-6.
  - d. Interim Support Requirements are based on BAH II-WITH, and BAH II -DIFF rates for a soldier's rank. As of 1 January 1998, soldiers receive Basic Allowance For Housing (BAH). BAH is a combination of the BAQ rate authorized and VHA for the locale. THE ARMY SUPPORT OBLIGATION DID NOT CHANGE.
- 6. Interim Support Requirement. AR 608-99, para. 2-6.
  - a. An Army-created guideline for support in the absence of an agreement between the parties or a court order.
  - b. Not intended to permanently define the support obligation--emphasis is on the word *interim*.
  - c. Only battalion commanders or Special Court-Martial Convening Authorities may release soldiers from the Interim Support obligations, IAW AR 608-99, paras. 2-14 – 2-15.
- 7. Interim Support Obligation - Rules for a Single Family:
  - a. All family members **living in government family housing:** No additional amount. *See* AR 608-99, para. 2-6d(2).

- (1) **Example 1:** CPT Leaving moved out of his on-post quarters after deciding to divorce his civilian wife. They do not have children. Mrs. Leaving obtained permission to live in the quarters for an additional six months without charge. What is CPT Leaving's interim support requirement if any?

**Answer 1:** *If there are no court orders or written agreements CPT Leaving owes no additional support.*

- b. All family members **living off-post:** BAH-II-WITH. *See* AR 608-99, para. 2-6d(1).

- (1) **Example 2:** MAJ Major moved out of her off-post rental house after deciding to divorce her civilian husband, Mr. Major. They have three children who all remained with Mr. Major in the rental house. What is MAJ Major's interim support requirement?

**Answer 2:** *If there are no court orders or written agreements, MAJ Major will owe the BAH II WITH. Since Mr. Major and the kids all reside in the rental house, MAJ Major will owe the BAH II WITH.*

- c. Family members residing in **different locations:** PRO-RATA share to those NOT in government family housing. No additional support for family members residing in government family housing. *See* AR 608-99, para. 2-6d(3).

- (1) **Example 3:** CPT Moneymaker and her husband have four children and live on-post in government family housing. Mr. Moneymaker moves out to an apartment after the couple decides to separate with a view toward divorce. What is CPT Moneymaker's interim support requirement, if any?

**Answer 3:** *If there are no court orders or written agreements, CPT Money Maker owes a PRO RATA SHARE of her BAH II WITH to each family member not in government family housing. Thus, since she resides in the quarters with her four children, she only owes Mr. Moneymaker 1/5, or 20%, of her BAH II WITH.*

8. Interim Support Obligation - Rules for A Military Couple:

- a. Neither spouse owes support to the other if they do not have children. *See* AR 608-99, para. 2-6d(4).

- (1) **Example 4:** SFC Culpepper and SSG Culpepper were assigned to two separate duty locations. The Army sent SFC Culpepper to language training in California and SSG Culpepper to Korea for a year. What are the respective support requirements if they do not have children?

**Answer 4:** None. Service members do not have to support each other when separated if they do not have children.

- b. If a military couple has children, and the children are all living with one spouse off-post, the non-custodial spouse owes BAH II DIFF. *See* AR 608-99, para. 2-6d(4)(a).

- (1) **Hypothetical 5:** What if the Culpeppers have two children, and the kids will both reside with SFC Culpepper off post in California? Does SSG Culpepper owe support?

**Answer 5:** *If the couple is separated for whatever reason, the non-custodial military spouse owes BAH II DIFF to the custodial military spouse. Thus, SSG Culpepper owes BAH II DIFF to SFC Culpepper.*

- c. If at least one child resides with each spouse, neither spouse owes support to the other. *See* AR 608-99, para. 2-6d(4)(c).

- (1) **Hypothetical 6:** What if one child goes to Korea with SSG Culpepper and the other child goes to California with SFC Culpepper?

**Answer 6:** *When military spouses are separated and at least one child resides with each spouse, neither owes support regardless of the proportion of children. Here, neither Culpepper would owe support to the other.*

9. Interim Support Obligation - Rules for Multiple Families:

- a. A soldier might have family members from different relationships and living at varying locations. A soldier in a multiple family situation must provide a *pro-rata* share of the BAH II WITH to all family members not in government family housing. AR 608-99, para. 2-6e(1)(d).

- (1) **Hypothetical 7:** SSG Thomas (E-6) has two children by a previous relationship with no court-ordered support. He just separated from his current family of a wife and one child who reside off post. What is SSG Thomas' support requirement?

**Answer 7:** *Since there are no court orders or written agreements, the first step is to count total family members. Here, SSG Thomas has four family members: two kids from a prior relationship, his current spouse, and his child with his current spouse. Each family member therefore is entitled to 1/4 or 25% of his BAH II WITH.*

- b. Remember that the location of family members determines how much interim support the service member owes.

- (1) **Hypothetical 8:** Same facts as #7, but suppose his two children from his prior relationship live with their mother and step-father, SSG Newguy, in government quarters. What is SSG Thomas' support requirement?



**Answer 8:** *There are still no court orders or written agreements. SSG Thomas still has four family members. The current spouse and child still represent two of four family members and since they live off post, they are each entitled to 25% of the BAH II WITH just as explained in Analysis 7. However, since his children from the prior relationship are residing in government quarters, they are not entitled to financial support.*

- c. A service member must still comply with any valid existing court orders.

- (1) **Hypothetical 9:** Same as #8, but now you learn that SSG Thomas has a valid court order requiring him to pay \$150 per month per child for each of the two children of the previous relationship. What is SSG Thomas' support requirement?

**Answer 9:** *AR 608-99 requires SSG Thomas to honor the court ordered support of \$300 for his children of his prior relationship. The "interim" support requirements do not apply to this family. He still must provide interim support to the current spouse and child who reside off post, absent a court order for them. Since SSG Thomas's current spouse and child still represent two of his four "family members" he will continue to owe each of them 25% of the amount equal to his BAH II WITH.*

- d. A service member must comply with all court orders, not just ones pertaining to child support.

- (1) **Hypothetical 10:** Same facts as #9 except you just found a clause in the court order requiring SSG Thomas to \$100 per month in support to the children's mother.

**Answer 10:** *Since AR 608-99 requires a service member to comply with all valid court orders, SSG Thomas will additionally owe \$100 per month in support on top of the \$300 in child support for a total of \$400 to that family. He still owes his current spouse and child, residing off post, 25% each of his BAH II WITH.*

10. Starting/Stopping the Financial Support Obligation. AR 608-99, para. 2-7.

- a. Court-Ordered Support: Begins the date of the court order, or by the terms of the court order. Terminates IAW the terms of the court order.
- b. Support by Written Agreement: Begins on the day the last party signed it, unless the terms of the agreement state differently. Terminates IAW the terms of the agreement, or on the date a court order terminates the marriage or establishes a support obligation.
- c. Interim Support: Begins on the date the parties cease living together, based on one party voluntarily leaving the residence or a soldier being ordered out of the residence. Terminates on the date of a written agreement, date of a court order, or by action of a battalion commander or Special Court-Martial Convening Authority relieving the soldier of the obligation.

11. Payment In Kind. AR 608-99, para. 2-9.

- a. Allowed only in cases of interim support, unless the court order or written agreement allows for payment in kind.
- b. Limited to payment of non-government housing expenses for a dwelling in which the supported family members reside, and for which the soldier has an obligation by reason of contract, lease or loan agreement. AR 608-99, para 2-9d.
- c. Rent—Only if the service member has an obligation under the lease.
- d. Real property taxes and property insurance, mortgages.
- e. Includes “essential utilities,” such as gas, electricity, and water. DOES NOT include telephone or cable television charges. AR 608-99, para. 2-9d(3).

- f. Soldier must make up any shortfall between payment in kind and actual support obligation. AR 608-99, para. 2-9d(3).
- g. Other support in kind such as car payments, insurance and credit card obligations requires written consent of the supported family members. AR 608-99, para 2-9e.

12. The Commander's Role. AR 608-99, chapter 3.

- a. "Inquiries" include telephone calls, letters or other communications from or on behalf of family members.
- b. Direct inquiries to the company commander. Inquiries alleging repeated or continuing violations will be referred to the battalion commander. Acknowledge by letter the receipt of any inquiry that has insufficient information to make a response. AR 608-99, para. 3-1b.
- c. Company commanders must personally review inquiries, and sign each written reply, except those that the battalion commander signs. AR 608-99, para 3-1d.
- d. Release of Information. Before a soldier is questioned or counseled about a support issue, he or she must be given the opportunity to complete DA Form 5459 (Authorization to Release Information from Army Records). No information may be released from a soldier's personnel records without his or her consent, except in limited circumstances. AR 608-99, para 3-2.
- e. Counseling. *See* AR 608-99, para 3-4.
  - (1) Consult your legal advisor. AR 608-99, para. 3-6.
  - (2) Since most inquiries provide a basis for suspecting a potential violation of AR 608-99, soldiers should be read their Article 31 rights before questioning or counseling. AR 608-99, para 3-3.

- (3) Explain the support provisions of AR 608-99.
  - (4) If the soldier denies an obligation, determine why. If the soldier admits to an obligation, but says he has provided the support, obtain proof (receipts, LES voluntary allotment evidence, etc.). AR 608-99, para. 3-6b.
  - (5) If the soldier has failed to comply with the regulation, or indicates failure to comply in the future, order the soldier to comply. The order should specify that financial support will be provided NLT a specified date, the exact amount, who to provide it to, and method of payment. AR 608-99, para. 3-6b(3). The regulation permits soldiers to be ordered to initiate an allotment in response to previous violations of the regulatory support provisions. *See* AR 608-99, para. 3-3a(4).
  - (6) Explain the actions the soldier must take to comply.
  - (7) Refer the soldier to a Legal Assistance Attorney for advice and assistance.
  - (8) Consider taking adverse action against the soldier. Such action may include counseling, reprimand, a bar to reenlistment, separation, nonjudicial punishment, or court martial. *See* AR 608-99, para. 3-10.
- f. Command Replies to Inquiries. *See* AR 608-99, paras. 3-5 – 3-6.
- (1) **Reply within 14 days of receipt.** AR 608-99, para. 3-5a(1).

- (2) Include the name, rank and organization of the commander who counseled the soldier, along with the commander's address, telephone number, and a statement as to whether the soldier authorized the release of information from DoD records. If the soldier consents, also indicate whether the soldier admits whether he has an obligation of support and, if so, the actions he will take. AR 608-99, para. 3-5b.
- (3) Include a statement whether the soldier admits to the obligation, and if not, why not. AR 608-99, para. 3-6c(1).
- (4) If the soldier has no financial support obligation, advise the inquiring party why not. AR 608-99, para. 3-6c(2).
- (5) If the commander determines the soldier does have a support obligation, state whether the soldier admits he or she failed to provide it as required. AR 608-99, para. 3-6c(3).
- (6) If the soldier admits the obligation but says it was paid as required, summarize the payments, including the dates and amounts paid. If an allotment was initiated, state the date of initiation, the amount, and address of payee. AR 608-99, para. 3-6c(3)(a).
- (7) If the soldier admits he failed to provide support, state the reasons why and the steps the soldier will take to comply. The commander should state whether the soldier was ordered to comply with the regulation in the future and the details of the order. AR 608-99, para. 3-6c(3)(b).

13. Releasing Soldiers from Support Obligations. AR 608-99, paras 2-12 – 2-15.

- a. **Company commanders** cannot excuse failure to comply with the minimum requirements created by the regulation.

- b. SPCMCAs and Battalion Commanders can release soldiers from support requirements under AR 608-99, under certain circumstances. Before releasing a soldier, they must, IAW AR 608-99, para. 2-12:
  - (1) Be satisfied by a preponderance of the evidence that the regulatory intent would be furthered.
  - (2) Attempt to contact the family member for information needed to make a decision.
  - (3) Obtain a written legal opinion that release is legally proper.
- c. **Battalion commanders may** release a soldier from the regulatory support requirements of AR 608-99 in the following circumstances (*See* AR 608-99, para. 2-14):
  - (1) *Order has been issued by a court without jurisdiction.* Release from the requirement to support in accordance with the terms of a court order is only appropriate when jurisdiction is clearly lacking and the soldier has continuously provided support in accordance with a written agreement or the interim requirements of AR 608-99. *See* AR 608-99, para. 2-14b(1).
  - (2) *A court order does not contain a financial support provision.* Release under this authority is limited to instances in which there is a judicial proceeding underway and at least one court has issued an order, but there is no language of support in the order. Release should be discussed with the servicing SJA office. *See* AR 608-99, para. 2-14b(2).
  - (3) *The income of the spouse exceeds the military pay of the soldier.* This is a defense to spousal support, not child support, and only applies in the absence of a court order or written separation agreement. The soldier must demonstrate that the spouse makes more than the soldier's military base pay. *See* AR 608-99, para. 2-14b(3).

- (4) *The soldier has been the victim of a substantiated case of physical abuse.* Only appropriate when the abuse is documented by a court or a Family Advocacy Case Management Team (FACMT) and did not involve a mutual affray or abuse of the spouse by the soldier. This exception authorizes release from regulatory requirements to support a spouse, but not children. *See AR 608-99, para. 2-14b(4).*
- (5) *The supported family member is in jail.* This exception applies to any penal institution, regardless of the reason for incarceration. *See AR 608-99, para. 2-14b(5).*
- (6) *The supported child is in the custody of another who is not the lawful custodian.* This limited exception applies only when the soldier is the lawful custodian and is diligently pursuing physical custody. *See AR 608-99, para. 2-14b(7).*
- (7) *Support has been provided, per the regulation, for 18 months.* This applies only to release from spousal, and not child support, obligations. The husband and wife must have been separated for 18 months; the soldier must have provided support per the regulation for those 18 months; civilian courts must be available to order support; the soldier must not have acted in any manner to avoid service of process; and the soldier must not receive BAH II WITH solely on the basis of providing support to the family member. *See AR 608-99, para. 2-14b(6).*

- d. Special Court-Martial Convening Authority (SPCMCA) Release Authority. SPCMCA's may release soldiers from the obligation to provide spousal, but not child support under the regulation, but NOT support ordered by courts or agreed on in a written support agreement. They must be satisfied by a preponderance of the evidence that fundamental fairness warrants releasing the soldier from the obligation, and must obtain a written legal opinion before releasing the soldier from the obligation. *See AR 608-99, para. 2-15.*

14. Soldiers seeking child support from ex-spouses.

- a. Soldiers can use the "IV-D" program in the state in which they are assigned.
- b. Under the IV-D program, for a minimal fee (not exceeding \$25.00), the state will pursue the soldier's support claim, even if the non-supporting ex-spouse is located in a different state.

#### **IV. JANUARY 2004 BAH TABLE II AND DIFFERENTIAL**

<b>GRADE</b>	<b>BAH II WITH</b>	<b>BAH II DIFF</b>
0-7 To 0-10	\$1292.70	\$260.10
06	\$1163.70	\$215.40
05	\$1121.70	\$208.20
04	\$988.80	\$138.30
03	\$818.80	\$138.00
02	\$698.40	\$162.90
01	\$624.90	\$176.40
03E	\$879.30	\$145.20
02E	\$793.50	\$173.40
01E	\$733.20	\$203.10
W5	\$954.90	\$86.40
W4	\$875.10	\$106.50
W3	\$802.20	\$160.80
W2	\$737.40	\$169.80
W1	\$637.80	\$164.40
E9	\$840.00	\$217.50
E8	\$774.60	\$203.40
E7	\$719.10	\$235.80
E6	\$664.50	\$227.70



E5	\$597.60	\$193.50
E4	\$519.30	\$167.70
E3	\$483.30	\$137.10
E2	\$460.50	\$183.90
E1	\$447.60	\$208.80